

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

AUG 2 1993

OFFICE OF  
MANAGING DIRECTOR

Donald E. Ward, Esq.  
1201 Pennsylvania Avenue, N.W.  
Fourth Floor  
Washington, D.C. 20004

92-302-1

Re: John T. Pritchard  
New FM Station  
Burlington, Iowa  
Fee Control #9201088170326001

Dear Mr. Ward:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. §1.1111. The subsection checked below is specifically applicable to your request.

- \_\_\_\_\_ No fee is required for the above referenced submission (§1.1111(a)(1)).
- \_\_\_\_\_ An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).
- \_\_\_\_\_ The applicant cannot fulfill the prescribed age requirement (§1.1111(a)(4)).
- \_\_\_\_\_ The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).
- \_\_\_\_\_ A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).
- \_\_\_\_\_ The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(a)(6)).
- \_\_\_\_\_ In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).

- \_\_\_\_\_ In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order designating the case for hearing (§1.1111(b)(2)).
- \_\_\_\_\_ In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).
- \_\_\_\_\_ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).
- \_\_\_\_\_ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)).
- \_\_\_\_\_ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but the above-referenced application, and the application was immediately grantable (§1.1111(b)(4)).
- X   In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but the above-referenced application and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).

A check, made payable to the maker of the original check and drawn in the amount of \$6,760, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,



Marilyn J. McDermott  
Associate Managing Director  
for Operations

Holly

LAW OFFICES OF  
DONALD E. WARD  
1201 PENNSYLVANIA AVENUE, N.W.  
FOURTH FLOOR  
WASHINGTON, D.C. 20004

✓ 6/14/93  
① DM-records  
② FMD-action

(202) 626-6290

FAX (202) 626-6292

June 10, 1993

9201088170326001

Mr. Thomas M. Holleran  
Acting Managing Director  
Federal Communications Commission  
1919 M Street N.W., Room 848  
Washington, D.C. 20554

Re: Refund of Hearing Fee to John T.  
Pritchard re File No. BPH-910722MI;  
Burlington, Iowa

Dear Ms. Searcy:

On behalf of our client, John T. Pritchard, it is respectfully requested that he be **refunded the \$6,760 Hearing Fee** paid by him in January 1992 (Exhibit A hereto), with respect to his application for a construction permit for a **new FM station at Burlington, Iowa** (File No. BPH-910722MI).

This request is based upon Section 1.1111(b)(4) of the Commission's Rules, and the fact that, following designation of the application for hearing, a Settlement Agreement was entered into with the only competing applicant, John M. Giannettino, and was submitted to the Presiding Judge by the date fixed for the filing of a Notice of Appearance. That Agreement, which contemplated the dismissal of the Giannettino application, was approved by ALJ Sippel; a copy of his Memorandum Opinion and Order released February 18, 1993 (FCC 93M-77) is submitted as Exhibit B hereto. Therein, Judge Sippel dismissed the Giannettino application, deleted the contingent environmental issue, accepted an amendment to the Pritchard application, and granted that application as amended.

Please remit the refund to Mr. Pritchard at Station KKMI-FM, 2850 Mt. Pleasant Street, Burlington, Iowa 52601.

In the event of any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

  
Donald E. Ward

FCC/MELLON JAN 07 1992

LAW OFFICES  
DONALD E. WARD, P.C.  
1201 PENNSYLVANIA AVENUE, N.W.  
FOURTH FLOOR  
P.O. BOX 286  
WASHINGTON, D.C. 20044-0286

EXHIBIT A

Donald E. Ward  
.....  
Of Counsel  
Chester F. Naumowicz

(202) 626-6290

FAX (202) 626-6292

January 6, 1992

Federal Communications Commission  
Mass Media Services  
P.O. Box 358170  
Pittsburgh, PA. 15251-5170

Re: John T. Pritchard,  
Burlington, Iowa,  
File No. BPH-910722MI,  
Payment of Hearing Fee

Gentlemen:

On behalf of our client, John T. Pritchard, applicant for a construction permit for a new FM station to serve Burlington, Iowa, on Channel 276C3 (File No. BPH-910722MI), I enclose:

1. Completed FCC Form 155; and
2. The applicant's check No. 124 in the sum of Six Thousand Seven Hundred Sixty Dollars (\$6,760.00), payable to the Federal Communications Commission, in payment of the applicant's hearing fee.

This submission is made pursuant to the Public Notice released November 4, 1991 (Report No. NA-153).

Please date-stamp the enclosed "FILE COPY" of this transmittal letter, and return it to us in the enclosed stamped, self-addressed envelope.

Please address any communications regarding this matter to this office.

Very truly yours,

  
Donald E. Ward

Enclosure  
cc (w/encl.): John T. Pritchard

FEDERAL COMMUNICATIONS COMMISSION  
**FEE PROCESSING FORM**

FOR  
FCC  
USE  
ONLY

Please read instructions on back of this form before completing it. Section I **MUST** be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

**SECTION I**

APPLICANT NAME (Last, first, middle initial)

PRITCHARD, JOHN T.

MAILING ADDRESS (Line 1) (Maximum 36 characters - refer to Instruction (2) on reverse of form)

2212 Piper Place, Apt. 1

MAILING ADDRESS (Line 2) (If required) (Maximum 36 characters)

CITY

BURLINGTON

STATE OR COUNTRY (If foreign address)

IOWA

ZIP CODE

52601


CALL SIGN OR OTHER FCC IDENTIFIER (If applicable)

BPH-910722MI

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A)	(B)	(C)	FOR FCC USE ONLY									
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)										
(1) <table border="1"><tr><td>M</td><td>W</td><td>R</td></tr></table>	M	W	R	<table border="1"><tr><td></td><td></td><td></td><td></td></tr></table>					<table border="1"><tr><td>\$ 6,760</td></tr></table>	\$ 6,760	<table border="1"><tr><td></td></tr></table>	
M	W	R										
\$ 6,760												

**SECTION II** — To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A)	(B)	(C)	FOR FCC USE ONLY		
FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)			
(2) <table border="1"><tr><td></td></tr></table>		<div><p>JOHN T. OR JANE A. PRITCHARD 2212 PIPER PL., APT. 1 BURLINGTON, IA 52601</p><p>Pay to the order of <u>FEDERAL COMMUNICATIONS COMMISSION</u> \$ <u>6760<sup>00</sup></u></p><p><u>SIX THOUSAND SEVEN HUNDRED SIXTY AND 00/100 DOLLARS</u></p><p><u>FIRSTAR BANK</u> BURLINGTON, NA Burlington, IA 52601</p><p><u>10739215141 657 142 60 0124</u></p></div>	<u>124</u>		
(3) <table border="1"><tr><td></td></tr></table>					
(4) <table border="1"><tr><td></td></tr></table>					
(5) <table border="1"><tr><td></td></tr></table>					

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED WITH THIS APPLICATION OR FILING
\$ 6,760

FOR FCC USE ONLY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 93M-77  
30898

In re Applications of	)	MM DOCKET NO. 92-302
	)	
JOHN M. GIANNETTINO	)	File No. BPH-910719MA
	)	
JOHN T. PRITCHARD	)	File No. BPH-910722MI
	)	
For Construction Permit for a	)	
New FM Station on Channel 276C3	)	
in Burlington, Iowa	)	

MEMORANDUM OPINION AND ORDER

Background

Issued: February 16, 1993;

Released: February 18, 1993

1. This is a ruling on a Joint Petition For Approval Of Settlement Agreement And For Grant of Application ("Joint Request") that was filed on January 12, 1993, by John M. Giannettino ("Giannettino") and John T. Pritchard ("Pritchard"), and on a related Contingent Petition For Leave To Amend that was filed by Pritchard on that same date. Pritchard also filed on January 22, 1993, a Supplement To The Contingent Petition and a Declaration. The Mass Media Bureau ("Bureau") filed Consolidated Comments On Joint Request For Approval Of Settlement Agreement And Contingent Petition For Leave To Amend on January 28, 1993.

Facts

2. Giannettino and Pritchard are the only two mutually exclusive applicants for a construction permit for a new FM Station on Channel 276C3 at Burlington, Iowa. See Hearing Designation Order DA 92-1669, released December 23, 1992.

3. The Joint Petition contemplates that Giannettino's application will be voluntarily dismissed with prejudice in return for a payment of \$20,000.00 representing an amount less than his actual legitimate and prudent expenses, and that Pritchard will receive the grant. The proposed Contingent Amendment would permit Pritchard to withdraw his divestiture and integration commitments.

4. The Bureau's Comment of January 28, 1993, states that approval of the Joint Request should be withheld until the Audio Services Division had determined that Pritchard has adequately addressed the contingent environmental issue and until that issue has been resolved in Pritchard's favor. See Hearing Designation Order, *supra* at Paras. 3, 7(1). On February 12, 1993, the Assistant Chief, Audio Services Division, advised the Presiding Judge in writing:

Upon examination of the enclosed pleading [Supplement To Contingent Petition and Engineering Statement], the

Bureau finds that the information satisfies the requirement of 47 C.F.R. §1.1311.

Accordingly, the Bureau requests that the contingent environmental issue and the short spacing issue specified as to this applicant be eliminated from the Hearing Designation Order.

Based on the unqualified statement of the Bureau quoted above and the representations of Pritchard in his Petition For Leave To Amend, the environmental issue and the short spacing issue against Pritchard will be deleted.

5. Pritchard's application was filed on July 23, 1991, at which time he had pending an application to acquire control of the licensee of Station KKMI-FM at Burlington. Pritchard represented at that time, as was then required by law, that he intended to divest the KKMI interest in the event he was granted the CP in this case. However, since Pritchard's filing in 1991, the Commission has amended its multiple ownership rule [47 C.F.R. §3555] to allow common ownership of more than one station in a broadcast service that is located in the same area. See Revision of Radio Rules and Policies, 7 F.C.C. Rd 2755 et seq (Comm'n 1992). Specifically, Pritchard qualifies under the new proviso that in radio markets having 14 or fewer commercial radio stations, a party may own up to 3 commercial radio stations, no more than 2 of which are in the same [FM] service and so long as the cumulative radio ownership is less than 50% of the stations in the market. 47 C.F.R. §3555(a)(i). It is established that under the facts here, Pritchard qualifies under the amended multiple ownership rule and he is therefore relieved of his commitment to divest any interest in the licensee of Station KKMI-FM. <sup>2</sup> Pritchard filed a Supplement on January 22, 1993, which contained an Engineering Statement to support that analysis of his compliance with the amended multiple ownership rule.

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<sup>1</sup> There is no short spacing issue as such that was set against Pritchard in the HDO. However, there was a question raised and discussed about a possible signal interference with KBKB-FM due to the proximity of Pritchard's proposed tower. See HDO at Para. 2. KBKB-FM's objection was based on possible interference with air traffic signals. But the FAA set a condition, which will be included in the grant, which satisfied the FAA. Also, Pritchard has undertaken in his Engineering Statement to rectify any interference. Therefore, the Bureau ruled in the HDO that the "concern" of KBKB-FM was baseless. See HDO, supra at Para. 2.

<sup>2</sup> Pritchard presents evidence showing that there are four broadcast stations licensed to Burlington, two of which are AM services and two of which are FM services. Four additional FM services which are outside of the Burlington city limits would also be counted, as well as one additional AM service in Fort Madison. When Pritchard receives the new Burlington FM service for Channel 276C3 he will own two of five FM services which constitute only 40% of the Burlington radio stations and only two of ten, or 20%, of the broadcast stations in the relevant "radio market."

6. Pritchard also had committed to fully integrate himself into the management of the new FM station if he is awarded the CP. However, since the case is now in settlement which, once approved, will result in dismissal of the only competing applicant, Pritchard may now be relieved of his integration commitment. Ruarch Associates, 103 F.C.C. 2d 1178 (Comm'n 1986). See also Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 F.C.C. Rcd 157, 160 (Comm'n 1990), recon. granted in part, 6 F.C.C. Rcd 3403 (Comm'n 1991) (Comm'n permits applicant in a "global" settlement to withdraw divestiture and integration proposals where settlement is reached early in the hearing process).

7. John T. Pritchard now is basically qualified to receive the grant and there are no added issues to resolve or qualifying issues to consider.

#### Settlement

8. The statutory standard to be applied in accepting or rejecting a settlement proposal provides:

The Commission shall approve the agreement only if it determines that (a) the agreement is consistent with the public interest, convenience or necessity, and (b) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.

Communications Act of 1934, as amended, Section 311(c)(3). See Oak Television of Everett, Inc., et al., 93 F.C.C. 2d 926 (Review Bd. 1983).

9. In this case, the Joint Petition was filed timely in accordance with Section 73.3525. The parties have represented under penalty of perjury that their applications were not filed for the purpose of reaching or carrying out a settlement agreement and that the agreement is in the public interest. Also, the Bureau has no objection to approving the settlement. Therefore, it is determined that the parties have complied with 47 C.F.R. §§73.3525(a)(1) and (a)(2) of the Commission's rules. In addition, a review of Giannettino's 32 line-item expenses totalling \$20,249.39 as of January 8, 1993, has been made by the Presiding Judge and those expenses are found to be legitimate and prudent in accordance with 47 C.F.R. §73.3575(a)(3) (1991).

10. There has been compliance with the local publication requirement of the Commission's rules. 47 C.F.R. §73.3594(g). The parties also have paid the required hearing fees. 47 C.F.R. §1.221(g). Pritchard has provided for the protection of persons from environmental hazard at and around his antenna site and has satisfied any concern for signal interference to the Bureau's satisfaction. Commission resources will be conserved by the termination of this case prior to hearing. In addition, the public interest will be served by approval of this agreement which will eliminate the need for protracted litigation and the corresponding utilization of resources, and which ensures that a new FM service will be delivered to Burlington, Iowa at an earlier date. Accordingly, it is appropriate that the proposed settlement be accepted.



ORDER

IT IS ORDERED that the Joint Petition For Approval Of Settlement Agreement And For Grant Of Application filed on January 12, 1993, by John M. Giannettino and John T. Pritchard IS GRANTED and the Settlement Agreement IS ACCEPTED.

IT IS FURTHER ORDERED that the Contingent Petition For Leave To Amend filed on January 12, 1993, by John T. Pritchard IS GRANTED and the amendment withdrawing his divestiture and integration commitments IS ACCEPTED.

IT IS FURTHER ORDERED that the application of John M. Giannettino (File No. BPH-910719MA) IS DISMISSED with prejudice and the applicant's name and file number ARE STRICKEN from the case caption.

IT IS FURTHER ORDERED that the application of John T. Pritchard (File No. BPH-910722M1) for a Construction Permit for New FM Channel 276C3 at Burlington, Iowa, IS GRANTED, subject to the following condition:

Upon receipt of notification from the Federal Communications Commission that harmful interference is being caused by the permittee's transmitter, the permittee shall immediately reduce power to the point of no interference, cease operation, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after one(1) year of interference-free operation.

IT IS FURTHER ORDERED that the Prehearing Conference set for February 23, 1993 and the Hearings set for April 20, 1993, and May 4, 1993, ARE CANCELLED and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Administrative Law Judge